

STATE OF CALIFORNIA
ELECTRICITY OVERSIGHT BOARD



Gray Davis, Governor

October 22, 2001

Mr. David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**Re: Duke Energy Oakland, LLC
Duke Energy Southbay, LLC**

Docket No. ER02-10-000

Dear Mr. Boergers:

The California Electricity Oversight Board hereby e-files its Motion to Intervene and Protest in the above-referenced docket.

Thank you for your assistance.

Sincerely,

/s/ Lisa V. Wolfe

Lisa V. Wolfe
Staff Counsel
Electricity Oversight Board

Enclosures

cc: Official Service List of ER02-10

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy Oakland, LLC
Duke Energy Southbay, LLC

Docket No. ER02-10-000

**MOTION TO INTERVENE AND PROTEST OF THE
CALIFORNIA ELECTRICITY OVERSIGHT BOARD**

Pursuant to the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, §§ 385.211 and 385.214(a)(3) and (b), and the Commission's Notice of Filing dated October 5, 2001, the California Electricity Oversight Board ("Board") hereby moves to intervene in and protests the above-captioned docket.

I. CORRESPONDENCE AND COMMUNICATIONS

The principal office of the Board is located at 770 L Street, Suite 1250, Sacramento, California, 95814. All pleadings, orders, correspondence and communications regarding this motion should be directed to the following persons:

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II. MOTION TO INTERVENE

The Board moves to intervene to obtain party status to represent itself, and the responsibilities the State of California has assigned to it, in this proceeding. The Board was created as a component of California's comprehensive restructuring legislation.

Among the Board's statutory responsibilities is oversight of the California Independent System Operator Corporation ("CAISO") including the energy and ancillary services markets administered by the CAISO and the reliability of the California electric grid.

On October 1, 2001, Duke Energy Oakland, LLC and Duke Energy Southbay, LLC ("Duke") submitted an informational filing updating Duke's Annual Fixed Revenue Requirements ("AFRR") and Variable O&M rates for their Reliability Must-Run ("RMR") facilities. Duke makes this filing in compliance with Schedule F of the RMR Agreement with the CAISO. Pursuant to the terms of Schedule F, the proposed revisions would become effective on January 1, 2002.

Duke and other California power plant owners provide RMR service to the CAISO by dispatching designated units at certain power plants at the direction of the CAISO. This dispatch is provided pursuant to individual RMR Agreements that follow a generic standard-form RMR Agreement that was agreed to as part of the May 28, 1999 RMR settlement (California Independent System Operator Corporation, 87 FERC ¶ 61,250 (1999)). Pursuant to this settlement agreement, each RMR Owner is required to annually adjust its rates using the formula detailed in Schedule F of the RMR Agreement.

The Board was actively involved in above-referenced RMR settlement proceedings and maintains ongoing oversight of the RMR Owners and process. As a result of the Board's statutory responsibilities described above, the Board has an interest that may be directly affected by the outcome of the above-captioned proceeding and the Board's participation is in the public interest of the citizens of the State of California. 18 C.F.R. §§ 385.214(b)(2)(ii) and 385.214(b)(2)(iii). For the above-mentioned reasons, the Board respectfully requests that the Commission grant this motion to intervene.

III. PROTEST

The Board protests Duke's October 1, 2001, informational filing. In general, the data provided by Duke is inadequate to allow for an effective review by the Board and other affected parties including the California Public Utilities Commission ("CPUC") and fails to conform to the requirements of Article 1, Part B of Schedule F that the informational filing contain:

"...detailed workpapers...presented in a format consistent with the presentation of information in the FERC Form No. 1;" and "...a comparison of the major components of the resulting revenue requirements for the relevant Cost Year with the corresponding components of the revenue requirements that result from the application of the Formula using costs from the Owner's FERC Form 1 relating to the proceeding calendar year..."

The Board supports, and hereby incorporates by reference, the specific grounds for protest set forth by the CPUC in its "Notice of Intervention and Protest of the Public Utilities Commission of the State of California" filed with the Commission in the above-captioned proceeding.

The Board also supports the request for relief set forth by the CPUC. Due to the fact that Duke's informational filing is facially inadequate, the Board requests that the Commission extend the 75-day deadline (i.e. the deadline established in the RMR Agreement for parties to protest the informational filing) to and including 75 days from that date on which Duke provides a supplement to its October 1, 2001 informational filing which would render that filing adequate and allow for effective review by affected parties.

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Dated: October 22, 2001

Respectfully submitted,

/s/ Lisa V. Wolfe

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CERTIFICATE OF SERVICE

I hereby certify that, on October 22, 2001, I served the foregoing document upon each person designated on the official service list compiled by the Secretary for the above-captioned proceeding.

Dated at Sacramento, California, this 22nd day of October 2001.

/s/ Lawrence Cook

Lawrence Cook
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